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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 COTOC JOSE SANCHEZ,) CASE NO. C09-1646-RSM
09)
Petitioner,)
10)
v.)
11) REPORT AND RECOMMENDATION
A. NEIL CLARK, Field Office Director, U.S.)
Immigration and Customs Enforcement,)
12)
Respondent.)
13 _____)

14 I. INTRODUCTION AND SUMMARY CONCLUSION

15 On November 18, 2009, petitioner Cotoc Jose Sanchez, also known as Jose
16 Cotoc-Sanchez, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241,
17 challenging his detention by the U.S. Immigration and Customs Enforcement (“ICE”). (Dkt.
18 No. 6.) He requests that this Court order his release from custody on conditions or reasonable
19 bond, arguing that “such custody violates the due process rights of the Petitioner.” *Id.* at 1.
20 On January 11, 2010, the government filed a motion to dismiss, arguing that petitioner’s habeas
21 petition should be dismissed because petitioner has received two individualized bond hearings
22 before an Immigration Judge, and was ordered released from custody under bond of \$5,000 at

01 the first bond hearing, and was granted a bond reduction to \$2,500 at the second hearing. (Dkt.
02 No. 12.) The government asserts that because petitioner has received the relief sought in his
03 habeas petition, his petition should be dismissed. *Id.*

04 For the reasons set forth below, the Court recommends that respondent's motion to
05 dismiss be granted, and this matter be dismissed with prejudice.

06 II. BACKGROUND AND PROCEDURAL HISTORY

07 Petitioner is a native and citizen of Guatemala who entered the United States without
08 inspection on or about May 25, 2005. (Administrative Record ("AR") at L81, L115.) On
09 May 19, 2009, petitioner was detained by ICE following his release from the Washington
10 County Jail in Hillsboro, Oregon, where he had been booked after his arrest for Theft in the
11 Third Degree. (AR R3, R9, R41.) ICE served petitioner with a Notice to Appear, placing him
12 in removal proceedings and charging him as subject to removal for being present in the United
13 States without being admitted or paroled. (AR L6-7.)

14 On July 15, 2009, petitioner appeared for a bond hearing before an Immigration Judge
15 ("IJ") who ordered that petitioner be released from custody under bond in the amount of \$5,000.
16 (AR L11-12, L14, L17.) Petitioner appealed the IJ's bond decision to the Board of
17 Immigration Appeals ("BIA"), which determined that a \$5,000 bond amount was reasonable
18 under the circumstances. (AR L104-105.)

19 On August 14, 2009, the IJ ordered petitioner removed to Guatemala. (AR L62-74.)
20 On August 17, 2009, petitioner timely appealed the IJ's removal order to the BIA, which
21 dismissed the appeal on October 30, 2009. (AR L102-103, L137-38.) On November 9, 2009,
22 petitioner filed a petition for review of the BIA's decision with the Ninth Circuit Court of

01 Appeals, along with a request for a temporary stay of removal. *See Cotoc-Sanchez v. Holder*,
02 No. 09-73557 (9th Cir. 2009). Pursuant to Ninth Circuit General Order 6.4(c)(1)(3), a
03 temporary stay of removal was automatically issued. *See id.* Petitioner's petition for review
04 remains pending in the Ninth Circuit. On November 11, 2009, petitioner filed the present
05 habeas corpus action, challenging his continued detention. (Dkt. No. 6.)

06 On January 7, 2010, a bond redetermination hearing was held before an IJ, who ordered
07 that petitioner's bond amount be reduced from \$5,000 to \$2,500. (Dkt. No. 12, Ex. 1.) On
08 January 11, 2010, respondent filed a Return Memorandum and Motion to Dismiss. (Dkt. No.
09 12.) Petitioner did not file a response.

10 III. DISCUSSION

11 Section 236 of the INA provides the framework for the arrest, detention, and release of
12 aliens in removal proceedings. *See* INA § 236, 8 U.S.C. § 1226. That provision provides the
13 Attorney General with discretionary authority to determine whether an alien should be
14 detained, released on bond, or released on conditional parole pending the completion of
15 removal proceedings, unless the alien falls within one of the categories of criminal aliens
16 described in Section 236(c), for whom detention is mandatory. *See id.* Once removal
17 proceedings have been completed, the detention and release of aliens shifts to INA § 241, 8
18 U.S.C. § 1231.

19 Section 241(a)(1)(A) of the INA states that "when an alien is ordered removed, the
20 Attorney General shall remove the alien from the United States within a period of 90 days (in
21 this section referred to as the 'removal period')." INA § 241(a)(1)(A). During the 90 day
22 removal period, continued detention is required. INA § 241(a)(2). Section 241(a)(6)

01 provides the Attorney General with discretionary authority to detain certain aliens beyond the
02 removal period, or to release them under an order of supervision. INA § 241(a)(6). The
03 determination of when an alien becomes subject to detention under Section 241 rather than
04 Section 236 is governed by Section 241(a)(1)(B), which provides:

05 The removal period begins on the latest of the following:

- 06 (i) The date the order of removal becomes administratively final.
- 07 (ii) If the removal order is judicially reviewed and if a court orders a stay of
08 the removal of the alien, the date of the court's final order.
- 09 (iii) If the alien is detained or confined (except under an immigration
process), the date the alien is released from detention or confinement.

10 INA § 241(a)(1)(B)(emphasis added). Thus, pursuant to INA § 241(a)(1)(B)(ii), where a court
11 issues a stay of removal pending its review of an administrative removal order, the alien
12 continues to be detained under INA § 236(a) until the court renders its decision. *See*
13 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008).

14 *In Prieto-Romero*, the Ninth Circuit held that aliens who are in immigration detention
15 pending judicial review of an administratively final order of removal are entitled to an
16 individualized bond hearing before an Immigration Judge. *Prieto-Romero*, 534 F.3d at 1053.
17 The Ninth Circuit determined that even though an alien's continued detention is authorized by
18 INA § 236(a), "due process requires 'adequate procedural protections' to ensure that the
19 government's asserted justification for physical confinement 'outweighs the individual's
20 constitutionally protected interest in avoiding physical restraint.'" *Prieto-Romero*, 534 F.3d at
21 1065 (quoting *Zadvydas*, 533 U.S. 678, 690-91 (2001)). The Court thus held that an alien has
22 the right to contest the necessity of his detention before a neutral decision maker and an

01 opportunity to appeal that determination to the BIA. *See Prieto-Romero*, 534 F.3d at 1066
02 (citing 8 C.F.R. § 236.1(d); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006)(holding that “an
03 Immigration Judge must consider whether an alien who seeks a change in custody status is a
04 threat to national security, a danger to community at large, likely to abscond, or otherwise a
05 poor bail risk.”)).

06 In the present case, the Ninth Circuit has issued a stay pending its review of petitioner’s
07 administrative removal order. *See Cotoc-Sanchez*, No. 09-73557. Because his removal order
08 has been stayed by the Ninth Circuit pending its review of the BIA’s decision, the removal
09 period has not yet begun and INA § 236(a) still applies. *See id.* As respondent asserts,
10 however, the record shows that petitioner was provided two individualized bond hearings
11 before an Immigration Judge where he was given the opportunity to present evidence in support
12 of his release, and an opportunity to appeal that determination to the BIA. On July 15, 2009,
13 petitioner appeared for a bond hearing before an IJ who ordered that petitioner be released from
14 custody under bond in the amount of \$5,000. (AR L11-12, L14, L17.) Petitioner appealed
15 the IJ’s bond decision to the BIA, arguing that the bond amount set by the IJ was excessive and
16 unreasonable. (AR L105.) The BIA dismissed the appeal, explaining that “[t]he purpose of
17 bond is not to purchase freedom but rather to provide assurance of appearance after release.
18 The test for determining excessiveness of bail is not whether a respondent is financially capable
19 of posting bail but whether the amount of bail is reasonably calculated to assure the
20 respondent’s appearance for future proceedings.” (AR L104-105 (internal citations omitted).)
21 On January 7, 2010, a second bond redetermination hearing was held before an IJ, who ordered
22 that petitioner’s bond amount be reduced from \$5,000 to \$2,500. (Dkt. No. 12, Ex. 1.)

01 Because petitioner has received all of the relief sought in his habeas petition, his petition
02 should be dismissed.¹ *Prieto-Romero*, 534 F.3d at 1053 (holding that due process is satisfied
03 once an alien has “had an opportunity to contest the necessity of his detention before a neutral
04 decisionmaker and an opportunity to appeal that determination to the BIA.”); *see also*
05 *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008)(dismissing as moot part of habeas
06 petition challenging detention without an individualized bond hearing after IJ held a bond
07 hearing). (Dkt. No. 19.)

08 IV. CONCLUSION

09 For the foregoing reasons, the Court recommends that respondent’s motion to dismiss
10 be GRANTED, and this matter be DISMISSED with prejudice. A proposed order
11 accompanies this Report and Recommendation.

12 DATED this 18th day of February, 2010.

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14 Mary Alice Theiler
15 United States Magistrate Judge
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22 ¹ It also appears from the Ninth Circuit’s Docket that petitioner was released from ICE
custody and now resides in Hillsboro, Oregon. *See Cotoc-Sanchez*, No. 09-73557 (Dkt. 8).